



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN  
DIRECTOR

February 13, 1997  
AO-97-04

Walter J. Ziobro, Jr. Treasurer  
Libertarian State Committee  
P.O. Box 2610  
Boston, MA 02208

Re: Libertarian Political Committees

Dear Mr. Ziobro:

This letter is in response to your January 17, 1997, letter regarding the appropriate status of the various political committees currently organized on behalf of the Libertarian Party ("the Party") under M.G.L. c. 55, the campaign finance law. Given the nature of your letter, I am treating it as a request for an advisory opinion.

For the reasons set forth herein, the state committee and several ward, town and city committees (hereinafter "the Committees") initially organized on behalf of the Party as political party committees are now political action committees for purposes of M.G.L. c. 55.

Background - On November 27, 1996, the Governor's Council certified the results of the November 5, 1996, biennial state election. Because no statewide candidate of the Party received at least 3 percent of the vote, the Secretary of State advised that the "political party 'Libertarian' no longer exists in Massachusetts" but continues as a political designation. See November 27, 1996, Memorandum from John Cloonan to city and town election officials. As a result of the Secretary of State's determination that the Party had become a political designation, this office's deputy director Bradley S. Balzer wrote to you and treasurers of the Committees first organized on behalf of the Party. You correctly state that Mr. Balzer advised each treasurer that "the committees are no longer political party committees under [the campaign finance] law and are now considered political action committees." You have questioned Mr. Balzer's advice.

In your letter, you note that the Committees were organized under M.G.L. c. 52 to support the Party when the Party was a "political party" as defined by M.G.L. c. 50. Further, you state that those committees are only required to be re-elected and reorganized every four years. You do not believe, therefore, that the Party's "demotion" to a political designation should affect the status with OCPF of the party committees unless the Party remains a political designation through March of the year 2000. For these reasons, you have asked this office to issue a "ruling" that the Party's committees continue as political party committees under the campaign finance law and take various steps to inform Party members and election officials. You also

ask this office to request election officials to continue to accept statements of party organization filed pursuant to M.G.L. c. 52, s. 8.<sup>1</sup>

Discussion - At the outset, it should be noted that neither relevant election laws, M.G.L. c. 50 and c. 52, nor the campaign finance law expressly delineate how political committees organized on behalf of a political party are treated if the "party" becomes a "political designation." Nonetheless, the language of these statutes and other considerations lead me to conclude that the Committees became political action committees, once the Secretary of State determined that the Party was a political designation.

The terms "political party committee" and "political action committee" are defined by the campaign finance law, M.G.L. c. 55. Specifically, a "political party committee" is defined as a political committee "organized in accordance with chapter fifty-two on behalf of a political party, as defined in section one of chapter fifty, whether elected or non-elected." Although the Committees were initially organized "on behalf of a political party, as defined in section one of chapter fifty" they are no longer organized on behalf of such a political party since the Party itself is no longer a political party but a political designation.<sup>2</sup> While the campaign finance law does not specifically detail how this transition should occur, it does recognize generally that the purposes and status of political committees change. For this reason, the law provides that "any change in information previously submitted in a statement of organization shall be reported to the director . . . within ten days following the change." See M.G.L. c. 55, s. 5.

To permit the Committees to continue as political party committees when no political party exists would not only be misleading but potentially confusing. As you appear to concede in your letter, if new political committees organize in support of the Party as a political designation, they would be "political action committees." If this is true, a two tiered structure of committees would exist to support Party candidates leading to confusion and dual structure not contemplated by the campaign finance law.

In addition to being misleading and confusing, such a decision also raises serious constitutional considerations. As this office noted in AO-95-13:

[T]he "freedom from the need to show additional support is not an unmixed blessing: a political party is subject to

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<sup>1</sup> Your last request is not within this office's jurisdiction and should, if you wish to pursue this matter, be directed to the Secretary of State.

<sup>2</sup> This organizational treatment parallels the treatment of an individual committee member who ceases to be a member immediately if the member cancels or changes his party enrollment. See M.G.L. c. 52, s. 8. A member who changes parties or cancels his affiliation does not continue as a member of the committee until the next election or his successor, if any, is appointed.

considerable state regulation of its affairs, M.G.L. c. 52, and must select its candidates by a statewide primary, M.G.L. c. 53. . . ." Socialist Workers Party v. Davoren, 378 F. Supp. 1245 (Mass. 1974). . . . Even though a "political designation" may employ the word "party" . . . a "political designation" is not subject to the extensive statutory regulations applicable to a political party or its state committee.

Treating the Committees as political party committees would mean, for example, that the Committees could receive the benefit of the higher party contribution limits from individuals and PACs, i.e. \$5,000, without the additional burden of maintaining an "elaborate superstructure" or conducting a primary. For this reason, the Supreme Court has intimated that if the Committees were treated as political party committees the state's political parties could claim a constitutional violation since "the political party . . . was being forced to maintain an elaborate superstructure, conduct a primary, and so on, when none of these requirements are placed on [the Committees]." See Socialist Workers Party, supra at 1250.

Having concluded that the Committees are not political party committees, the statute compels the conclusion that the Committees are political action committees. M.G.L. c. 55, s. 1 defines "political action committees as a political committee "which is not a candidate's committee, a political party committee nor a ballot question committee. . . ." By definition, therefore, since the Committees are not political party committees, they are political action committees subject to the relevant provisions of the campaign finance law.

For these reasons, I am unable to issue the rulings you requested and must advise each treasurer of the Committees to register as soon as practicable as a political action committee.

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Sincerely,



Michael J. Sullivan  
Director